IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5642 OF 2005

Tulsidas Bhagwan Shetty).. Petitioner

Versus

Hemant Bharat Kachare and others).. Respondents

Mr.Uday Bobde i/b.Mr.M.C.Hegde for the Petitioner.

Mr.Y.S. Jahagirdar with Mr.G.S.Godbole for Respondent Nos.1 to 3.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 29TH AUGUST 2005

P.C.:

. This Petition has been filed against the concurrent findings of fact recorded by the Courts below. The trial Court had held that grounds under Sections 13(1)(b), 13(1)(k) and 13(1)(g) of the Bombay Rent Act have been made out. The landlords have established that the Petitioner had carried out some permanent construction without their permission, that there was non-use of the suit premises for the purposes for which they were let for more than six months and that the landlords bona fide and reasonably required the suit premises. The Appellate Court while decreeing the Suit on these three grounds has also found that the ground of sub-letting has been proved.

2. The submission on behalf of the Petitioner is that, when the Suit was filed, there was no permanent construction for which the landlords could file the Suit since it was already demolished by the Pune Municipal Corporation. This, in my view, is not a proper interpretation of Section 13(1)(b) of the Bombay Rent Act. The fact that permanent alterations had been effected in the suit premises, without the landlords consent, is not disputed. Therefore, the Courts below were right in decreeing the Suit under Section 13(1)(b).

3. As regards the ground of bona fide requirement, both the Courts have found that the suit premises are required by the landlords for the purposes of Plaintiff No.3 i.e. Respondent No.3 herein. Both the Courts have found that the premises which were available with the landlords were not suitable for the business which Plaintiff No.3 proposed to commence. The Courts have also found that hardship to the landlords would be great if the suit is not decreed.

4. The Courts below have found on evidence that the ground stipulated in Section 13(1)(k) has been established. The Petitioner was let the premises to run a hotel. Exhibit 48 which is the agreement of tenancy has been construed by the Courts below and the Appellate

Court has found that there is a case made out of sub-letting. Admittedly, he was not running a hotel in the suit premises for more than six months prior to the institution of the Suit. Therefore, the decree on the ground of Section 13(1)(k) cannot be assailed.

5. As regards sub-letting, it is submitted that the Petitioner has entered into a partnership agreement with three different people and he was running the business along with them in the suit premises. The Appellate Court has found that agreements were an eyewash and had been entered into to defeat the provisions of law. Reliance placed on behalf of the landlord in the case of *Parvinder Singh* vs. *Renu Gautam and others*, **(2004) 4 SCC 794**, is apt.

6. In such circumstances, I do not see any reason to interfere with the concurrent findings of fact. Hence, Petition rejected.

7. On the application of Mr.Bobde, the operation of the order is stayed for eight weeks from today on filing the usual undertaking within two weeks.